

ANDERSON EXHIBIT 28

ProTEXT Transcript Condensing for Windows

SHEET 1 PAGE 1

00310
 1 NO. D-1-GV-04-001286
 2 THE STATE OF TEXAS) IN THE DISTRICT COURT
 3)
 4 ex rel.)
 5 VEN-A-CARE OF THE)
 6 FLORIDA KEYS, INC.,)
 7 Plaintiffs,)
 8)
 9 VS.) TRAVIS COUNTY, TEXAS
 10)
 11 ABBOTT LABORATORIES INC.,)
 12 ABBOTT LABORATORIES, and)
 13 HOSPIRA, INC.)
 14 Defendant(s).) 201ST JUDICIAL DISTRICT
 15 *****
 16 ORAL AND VIDEOTAPED DEPOSITION OF
 17 JOSEPH EDWARD FISKE
 18 March 22, 2007
 19 VOLUME 2
 20 HIGHLY CONFIDENTIAL
 21 *****
 22 ORAL AND VIDEOTAPED DEPOSITION OF JOSEPH EDWARD
 23 FISKE, produced as a witness at the instance of the
 24 Plaintiffs, and duly sworn, was taken in the

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19 above-styled and numbered cause on the 22nd of March,
 20 2007, from 9:09 a.m. to 5:03 p.m., before CYNTHIA
 21 VOHLKEN, CSR in and for the State of Texas, reported
 22 by machine shorthand, at the offices of Jones Day, 77
 23 W. Wacker, Suite 3500, Chicago, Illinois, pursuant to
 24 the Texas Rules of Civil Procedure and the provisions
 25 attached previously.

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1 A P P E A R A N C E S
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 18 FOR THE DEFENDANT(S) ABBOTT LABORATORIES INC. AND

PAGE 3

HOSPIRA, INC.:
 13
 14 Mr. Jason Winchester
 15 Ms. Tara Fumerton
 16 Jones Day
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 18 Chicago, Illinois 60601-1692
 19
 20 ALSO PRESENT:
 21 John Maloy Lockwood, M.D.
 22 Ven-A-Care of the Florida Keys
 23 Mr. Brian Bobbitt, Videographer
 24
 25 *****
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 9 7 362
 10 8 416
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11 as follows:

12 EXAMINATION

13 BY MR. ANDERSON:

14 Q. Good morning, sir. Do you understand that

15 you are the Abbott corporate representative to testify

16 regarding pricing?

17 A. Yes, I do.

18 Q. Okay. And specifically you know you're

19 designated to testify about price setting and prices

20 to different classes of trade, correct?

21 A. Yes, I do.

22 Q. And, likewise, you know that you're

23 designated concerning price reports made by Abbott to

24 price-reporting services, correct?

25 A. Yes, I do.

00316 1 Q. And toward that end I would like for you to

2 define certain pricing terms. Are you willing to do

3 that?

4 A. Yes, I am.

5 Q. Can you provide me with Abbott's definition

6 of WAC?

7 A. WAC means wholesale acquisition cost.

8 Q. And other than the plain words, does WAC have

9 another meaning?

10 MR. WINCHESTER: Objection, form. Let

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11 me also clarify, before you answer, as to all of these

12 questions and these pricing issues, Mr. Fiske is

13 designated specifically with respect to these issues

14 as -- as relate to PPD drugs.

15 Go ahead and answer.

16 A. No, it doesn't have another meaning. I'm

17 going to answer the question your way this way,

18 however, that WAC price is also a case quantity

19 discount price that in the Pharmaceutical Products

20 Division would be available to any direct purchasing

21 customer who purchases in a full case quantity.

22 Q. (BY MR. ANDERSON) Can you describe how WAC

23 prices are used by Abbott in transacting business with

24 wholesalers?

25 A. It's our published catalog WAC, wholesale

00317 1 acquisition cost, and a wholesaler will receive WAC

2 price whether they purchase in a full case quantity or

3 an individual bottle. It's the price that the

4 wholesaler generally pays for the product.

5 Q. And when you say a wholesaler will receive

6 that price, do you mean that that will be the price

7 that is charged the wholesaler?

8 A. It's the invoice price for the product.

9 Q. And in turn, is it your understanding that

10 that is the price that the wholesaler will pay as

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11 published on the invoice?

12 A. It's -- yes.

13 Q. And are there any exceptions to that?

14 A. Yes, there are.

15 Q. And what are the exceptions?

16 A. When a product is launched into the

17 marketplace, there may be launch incentives for the

18 wholesaler to stock product as well as -- I'll call it

19 push, distribute the product to customers of theirs.

20 Q. And are those --

21 A. Those are available for a very short period

22 of time. I'm sorry for interrupting you. Those are

23 available for a very short period of time, two to

24 three weeks, generally, at most. It's just to get the

25 product in the marketplace to make sure it's available

00318 1 as the representatives start promoting the product to

2 physicians.

3 Q. Are these lower invoice prices offered a

4 couple of weeks after launch set before launch by

5 Abbott?

6 MR. WINCHESTER: Objection, form.

7 A. They're -- they're part of the launch plan,

8 sir.

9 Q. (BY MR. ANDERSON) Okay. So they're known to

10 Abbott before Abbott launches a product?

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11 A. Yes, sir.

12 Q. All right. And are there any other

13 exceptions, setting aside this launch price?

14 MR. WINCHESTER: Objection, form.

15 Q. (BY MR. ANDERSON) I'll rephrase to be more

16 specific.

17 Sir, are there any other exceptions to

18 the fact that Abbott bills wholesalers at WAC other

19 than this launch price?

20 A. Not today.

21 Q. In the -- in the past have there been other

22 exceptions to Abbott billing wholesalers at WAC?

23 A. Yes, there have.

24 Q. And what were those?

25 A. The only one that comes to mind is there was

00319 1 a period of time, I don't know precisely the length of

2 the time, when there was an opportunity for

3 wholesalers and other customers to purchase

4 erythromycin products during a deal period, and if

5 they purchased a certain dollar volume or quantity of

6 product, that deal price would be available to them

7 for the remainder of the year, I believe the -- the

8 situation was.

9 Q. In that context is it true that Abbott was

10 billing wholesalers for the Ery's at a price lower